IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2343 of 1988

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
JESANGBHAI K DABHI

Appearance:
1. Special Civil Application No. 2343 of 1988
MR HARDIK C RAWAL for the Petitioner
RULE SERVED for the Respondent

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 11/08/2004

ORAL JUDGEMENT

1. The challenge is against the award of Labour Court, Ahmedabad in Reference (LCA) No.740 of 1986 under Section 10 (1) (c) of the Industrial Disputes Act, 1947, ("I.D.Act", for short).

2. Mr.Rawal, learned Advocate for the Corporation, is heard, whereas the respondent, though duly served, has thought it fit not to remain present for the reason known best to him. Therefore, the Court has examined the entire record in absence of the respondent or his

representative since dispute is of 1986 and 18 years period have lapsed in between.

3. A resume of material and relevant facts emerging from the record needs to be narrated at this stage for effective adjudication of the disputes raised. The respondent, who was working as a Conductor at the relevant time with the petitioner-Corporation, was charge-sheeted on the premise that he remained absent without any authority and without any sanctioned leave. Upon departmental inquiry proceedings, the respondent faced dismissal order from service wef 15-03-1985 after inquiry. The approval application under Section 33 (2) (b) of the I.D.Act, before the Conciliation Officer at the instance of the petitioner, came to be rejected and thereafter, the respondent-workman raised the industrial dispute, inter-alia contending that the dismissal from the service is illegal, improper and unreasonable.

4. The Labour Court's award, which is under challenge in this petition only under Section 227 of the Constitution of India, directs the petitioner-Corporation to reinstate the workman on his original post with full back-wages. The learned Advocate for the Corporation has offered his arguments in support of the petition and against the impugned order in the award.

5. The jurisdictional sweep of this Court, while entertaining a petition under Article 227 of the Constitution of India, is undoubtedly very much circumscribed. The supervisory power of this Court, under Article 227, has to be exercised to see as to whether the decision-making authority, in Departmental Inquiry or in a domestic proceeding, has followed the principles of natural justice and other rules or provisions prescribed in the relevant rules or regulations. It is, therefore, ordinarily, that this Court will be at a lot to interfere with the order of the authority below or any Tribunal or Court. The anxiety of the Court, while entertaining the petition, is to consider as to how and what process and procedure is adopted in reaching the conclusion in a Departmental Inquiry. So, it is a process of the decision-making and not the type and the quality of the order, after holding the required inquiry in appropriate manner and prescribed procedure that has to be considered. It is true that upon finding of delinquency in a matter of employment by an employee or a servant or a workman, if the punishment imposed by the Department or the Disciplinary Authority is successfully shown or spelt out from the record, to be so disproportionate qua the degree and extent of

delinquency established against the servant or the workman, which shakes the conscience of the Court, it will obviously be an incumbency upon the Court to appropriately reshape and redesign the quantum of punishment which could commensurate the type and degree of delinquency established. It is in this context, the second submission with regard to the full back-wages awarded by the Labour Court and seriously criticised by Mr.Rawal, learned Advocate, appears to be quite just, reasonable and acceptable and not the first contention, questioning the direction of reinstatement of the respondent of his original post.

6. In the opinion of this Court, considering the backdrop of the entire factual profile, the period of absence and other relevant circumstances, emerging from the record, the direction in the impugned award of the Labour Court to the petitioner to reinstate the respondent with full back-wages needs to be reviewed, revised and substituted by back-wages to the extent of 25%, while upholding the order of reinstatement.

7. Accordingly, the petition, therefore, stands allowed without any order as to costs. Rule made absolute to that extent.

(J. N. BHATT, J.)

/shamnath